Federal Court  Cour fédérale

Date: 20130613

Docket: IMM-8797-12

Citation: 2013 FC 634

Ottawa, Ontario, this 13th day of June 2013

Present: The Honourable Mr. Justice Pinard

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

Yanxia YE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Lucinda Bruin, member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act"). The Board accepted the respondent's claim for refugee protection, concluding she was a Convention refugee under section 96 of the Act.

[2] The respondent is a 29-year-old citizen of the People's Republic of China.

[3] On September 11, 2011, the respondent and her husband entered Canada. They made an inland claim for refugee protection on September 20, 2011.

[4] The basis of the claim was the couple's alleged fear of the enforcement of China's one-child policy, as the couple wanted to have many children. They did not want to use birth control, submit to pregnancy checks or be subjected to abortion or sterilization.

[5] At the time of the refugee hearing, the respondent was pregnant with her first child.

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[6] The Board found, on a balance of probabilities, that the respondent and her husband were genuine in their strongly-held views about family planning. They established their desire to have at least two and possibly more children and they both wanted to continue having children until they had a son. They also established that they resist, on principle, the idea of using an Intra Uterine Device ("IUD") for birth control and that neither of them wanted to be sterilized.

[7] In the Board's opinion, in view of the Chinese government's official one-child policy and ongoing promotion of this policy, the claimants' views constituted a political opinion in opposition to the government and that a nexus was therefore established for the claim.

[8] The Board agreed with the Minister's submissions that the claimants' long-term fear about facing sterilization at some point in the future was based on too many unknowns to constitute an objective basis for the claim in itself.

[9] However, the Board found that given the female claimant's unique background and strong views, the cumulative effect of a compulsory fitting of an IUD and regular periodic examinations would amount to persecution in her circumstances. It was also clear to the Board from the claimants' testimony that there was a serious possibility that the cumulative effects of the penalties for resisting the one-child policy and the potential consequences to children would ultimately force the respondent into the untenable choice of either submitting to outside monitoring of her body and birth control procedures with which she disagreed, or face increasingly restrictive economic sanctions and ultimately lose basic educational and health opportunities for her children.

[10] As many of the problems the respondent potentially faced were a result of family planning laws, the Board found there was no state protection available to her.

[11] As it was the female respondent who actually faced the serious possibility of being pressured to accept invasive birth control measures and long-term monitoring, the Board found that the problems her husband faced upon his return to China did not constitute an objective basis for a finding that he faced a serious possibility of persecution pursuant to section 96 of the Act.

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[12] The only issue raised by the applicant is whether the Board erred in finding that the respondent had a well-founded fear of persecution.

[13] The standard of review applicable to this issue is reasonableness (*The Minister of Citizenship and Immigration v Ma*, 2009 FC 779 at para 31; *Kulasingam v The Minister of Citizenship and Immigration*, 2012 FC 543 at para 23).

[14] When reviewing a decision on the reasonableness standard, the Court must determine whether the Board's findings fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, [2008] 1SCR 190 at para 47). Although there may be more than one possible outcome, as long as the Board's decision-making process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 59).

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[15] The applicant has not taken a position on the Board's conclusion that the cumulative effect of a compulsory fitting of an IUD and regular periodic examinations would amount to persecution in the respondent's circumstances. Rather, the applicant states that the Board's reasons were inadequate and based on conjecture and speculation.

[16] I cannot agree with the applicant that the Court's intervention is warranted on this basis, given the jurisprudence which has recognized that coercive and physically intrusive interference with a woman's reproductive liberty, including forcible insertion of an IUD, constitutes persecution (*Zheng v The Minister of Citizenship and Immigration*, 2009 FC 327 at paras 13-14; *Chi v The Minister of Citizenship and Immigration*, 2002 FCT 126 at para 48).

[17] The applicant challenges the fact that the Board's decision was speculatively based on the notion that the respondent and her husband will continue to hold strong views with respect to birth control and wanting many children. However, the Board explained early in its analysis that on a balance of probabilities, it found the claimants were genuine in their strongly-held views about family planning. The applicant has not pointed to any evidence in the record that contradicted this finding or showed that in the future the respondent and her husband would not continue to hold these strong views. I therefore fail to understand how the Board erred by basing its conclusion on the fact that the respondent would continue to hold these views in the future.

[18] Furthermore, the Board's analysis of the objective basis of the respondent's claim was reasonable. As noted by the respondent, the standard for the Board's reasons is not perfection. As Justice Abella stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708:

> [17] The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the

> proper outcome by designating certain omissions in the reasons to be fateful.
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> [18] Evans J.A. in *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, explained in reasons upheld by this Court (2011 SCC 57, [2011] 3 S.C.R. 572) that *Dunsmuir* seeks to "avoid an unduly formalistic approach to judicial review" (para. 164). He notes that "perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:
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> When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum - the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive. [para. 44]
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> (Emphasis added.)

[19] Although the Board did not refer to specific documentation in the record before it that supported the respondent's claim that after the birth of her first child she would be subjected to a compulsory fitting of an IUD and regular periodic examinations, the objective documentary evidence supported these allegations (see, for example, the *Country of Origin Information (COI) Report on China*, published by the United Kingdom Border Agency on August 24, 2011, pages 476-492 of the Certified Tribunal Record). The applicant has not pointed to any evidence in the record that contradicted the respondent's claims on this issue.

[20] Moreover, I do not agree with the applicant that there is a contradiction between the following two findings made by the Board at paragraphs 9 and 10 of its decision:

> [9] … Considering that the claimants have come to Canada and claimed refugee protection before even starting their family, long-term fears about facing sterilization at some point in the future is based on too many unknowns to constitute and objective basis to the claim, in and of itself.
>
> [10] On the other hand, however, with respect to the female claimant, I agree with counsel's submissions that, given the claimants' unique background and strong views, a process of compulsory fitting of an IUD and regular periodic examinations amounts to persecution. […]

[21] The evidence supported the Board's distinction between the likelihood of sterilization and the likelihood that the respondent would face a compulsory fitting of an IUD and regular periodic examinations upon return to China. As the Board explained, the risk of sterilization depended on the gender of the couple's first child, in addition to several other unknowns, and the tendency for officials to resort to sterilization varied across China. In contrast, the Board accepted as fact that there was a serious possibility the respondent would be forced to use an IUD and be subjected to compulsory periodic pregnancy checks as soon as she registered her first child and was drawn into the family planning system.

[22] I am therefore of the view that the Board's analysis of the objective basis of the respondent's claim was reasonably open to it on the record before it.

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[23] For the above-mentioned reasons, the application for judicial review is dismissed.

[24] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision rendered on August 15, 2012 by a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8797-12
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. Yanxia YE
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 2, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	June 13, 2013

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